

including Judicial Arbitration, Mediation, Neutral Evaluation, and Private Arbitration

1. APPLICANT:

Applicant's Name: John M. Drath

Firm Name: DRATH, CLIFFORD, MURPHY & HAGEN

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City/State/Zip: Oakland, California 94612

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Email: jdrath@drathlaw.com

2. PANEL REQUEST: *(All applicants are requested to serve as Judicial Arbitrators)*

Check each panel for which you are applying:

Judicial Arbitration X Mediation Neutral Evaluation Private Arbitration

3. EDUCATION:

Dates (from-to)	College/University/Law School	Degree Obtained
1961-1965	University of Washington	AB
1965-1969	University of San Francisco	JD

4. LEGAL EXPERIENCE: State Bar No. 45031 Date Admitted: 1/1970

A. Are you a member in good standing of the State Bar of California? X Yes No

B. Are you a retired judicial officer? Yes X No

Please describe when/where you last served as a judicial officer: _____

C. Are you actively engaged in the practice of law at this time? ☒ Yes ☐ No

If not, are you retired from practice? _____ Date retired: _____

If your license is presently inactive, please explain: _____

D. Are you currently active in litigation practice? x Yes No

Approximately what percentage of your practice involves litigation? 100 %

E. If your practice includes personal injury litigation, approximately what percentage of your practice involves the representation of: plaintiffs 10 % ; of defendants 90 %?

F. How many of the following have you personally handled as attorney of record in the past five years? Jury Trials 7; Court Trials 1; Mediations 75; Arbitrations ;

G. Describe any legal publications or teaching you have done: _____

5. ADR TRAINING and EXPERIENCE

Course Title	Sponsoring Organization	Hours of Credit	Dates

A. Number of years experience as: mediator 15; arbitrator 20; neutral evaluator ;

B. List all other court-connected ADR panels of which you are a member, specifying the processes for which you have qualified: EASE Contra Costa County

C. State the name(s) of any organization(s) through which you have provided ADR services during the past five years, giving the dates and the services you provided:

D. Describe the subject matter of five disputes in which you served as the ADR provider in the past 5 years, including the dates of service, the process and if you were sole or co-provider.

1. Groundwater contamination	8/27, 8/28/03	- sole mediator	;
2. Premises Liability - personal injury	1/29/03	- sole mediator	;
3. Auto Liability - personal injury	9/30/03	- sole mediator	;
4. Nursing Home Liability	11/26/02	- sole mediator	;
5. Legal Malpractice	4/15/02	- sole mediator	;

E. Is your ADR style best described as facilitative or X evaluative/directive?

F. Describe any ADR related publications or training you have done:

G. Set forth your hourly fee or fee schedule, including any sliding scale or pro bono provisions. Attach a copy of your fee agreement. (Please note: Judicial arbitrators waive compensation for the first three (3) hours of hearing time in Alameda County and all ADR panelists are requested to accept at least three (3) Judicial arbitration cases per year).

1,500 half day (8:30 - 1:00 p.m.) 2,500 full day, including preparation

6. AVAILABILITY/SPECIAL REQUIREMENTS

A. List any languages, other than English, in which you are able to conduct ADR proceedings:

B. Please state any special bi-cultural/multi-cultural capabilities or familiarity you possess:

C. You are available to conduct ADR conferences: X in your office; X at counsel's office; other (please describe:)

D. You are available to conduct ADR proceedings: X during regular office hours; evenings by appointment; weekends by prior arrangement;

E. Please describe any requirements you have for ADR participants such as submission of copies of pleadings, briefs, declarations in lieu of testimony, etc.:

Written briefs 72 hours before mediation.

7. SUBJECT MATTER DESIGNATION

Please check each area below in which you are qualified by training/experience to provide ADR services, indicating the percentage it represents of your law practice, if any, and the ADR process(es) which you are prepared to offer in that area:

Case Type Accepted	% of Practice	Judicial Arb.	Mediation	Neutral Eval.	Private Arb.
Bankruptcy					
Business/Corp.					
Civil Rights					
Collections					
Construction	5		X		
Contracts	2	X	X		
Elder law/abuse		X	X		
Employment			X		
-Discrimination			X		
-Harassment			X		
-Termination			X		
Environmental			X		
Fraud		X	X		
False Imprison.		X	X		
Family Law					
HO Ass'n					
Insurance Cov.	5		X		
Intellect. Property					
Landlord-Tenant					
Legal Malpractice	50	X	X		
Maritime					
Med Malpractice	3		X		
Partnership					
P.I. - Auto	5	X	X		
P.I. - Other	5	X	X		
Premises Liability	5	X	X		
Probate/Trust					
Product Liab.	5	X	X		
Real Property					
Securities				/	
Tax					
Toxic Torts	10	X	X		
Wrongful Death	5	X	X		
Other:					

SERVICE DESCRIPTION AND FEE AGREEMENT

We, the undersigned parties, have voluntarily agreed to submit our dispute to the following indicated method of alternative dispute resolution:

____ Mediation

____ Arbitration

____ Neutral Evaluation

We have agree that JOHN M. DRATH shall serve as Mediator for this dispute according to the following terms:

I. RIGHTS AND OBLIGATIONS OF THE PARTIES

The parties understand and agree that alternative dispute resolution is voluntary and any party may end participation in the process at any time.

The parties understand that the mediator is a licensed attorney. However, the mediator will not provide the parties with legal advice nor represent any party as an attorney. The services of the mediator will be strictly limited to the ADR method selected by the parties above.

The parties understand that they each have the right to have any attorney present during the ADR process and may consult an attorney regarding their legal rights and obligations at any time. Any party may also choose not to have an attorney participate in the ADR process. All parties are free to have witnesses participate in the ADR process, in accordance with the hearing rules of the mediator.

II DESCRIPTION OF THE DISPUTE RESOLUTION PROCESS

A description of the ADR method chosen by the parties and any additional terms pertaining to that method are set forth below:

- ____ 1. **Mediation:** A voluntary, informal and confidential process in which the mediator improves party communication, helps parties clarify facts, identifies legal issues, and explores creative solutions to the dispute.

The parties agree the purpose of mediation is to enter into a mutually acceptable agreement to resolve all relevant issues. Any agreement reached as a result of mediation shall be in writing, cover every point needed to be resolved, and be the best expression of the intent and understanding of each party. This settlement agreement will be non-binding unless all parties specifically agree in writing in the agreement that it is binding. A binding agreement may be entered in the appropriate court as an enforceable judgment.

CONFIDENTIALITY OF MEDIATION PROCEEDINGS

The parties understand and agree that the mediation proceedings shall be confidential and cannot be used in any legal proceedings (unless the parties have entered into a binding agreement as described above.) The parties and the mediator acknowledge that unless specifically waived in writing, the provisions of California Evidence Code Sections 1115-1128 apply to this mediation. Section 1119 states in part:

- (a) No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation is admissible or subject to discovery, and disclosure of the evidence shall not be compelled in any arbitration ... civil action.
- (b) No writing, as defined in Section 250, that is prepared for the purpose of, or in the course of, or pursuant to, a mediation or a mediation consultation, is admissible or subject to discovery, and disclosure of the writing shall not be compelled, in any arbitration... civil action, in which, pursuant to law, testimony can be compelled to be given.
- (c) All communications, negotiations, or settlement discussions by and between participants in the course of a mediation consultation shall remain confidential.

Section 1122 provides, in pertinent part:

A communication or a writing, as defined in Section 250, that is made or prepared for the purpose or, or in the course of, or pursuant to, a mediation or a mediation consultation, is not made inadmissible, or protected from disclosure, if...

- (1) All persons who conduct or otherwise participate in the mediation expressly agree in writing, or orally in accordance with Section 1118, to disclosure of the communication, document, or writing.

- 2. **Arbitration:** A process in which a mediator hears evidence presented by the parties, determines facts, makes legal rulings and renders a decision.

The parties agree the arbitrator shall render an arbitration award in writing. The arbitration award will be non-binding unless all parties specifically agree in writing below that it is binding. A binding arbitration award may be entered in the appropriate court as an enforceable judgment.

I, _____ agree to a binding arbitration.
(Plaintiff)

I, _____ agree to a binding arbitration.
(Defendant)

- 3. **Neutral Evaluation:** A process in which the ADR provider hears informal written or oral presentations from each party, and shares an estimation of the value of the case with the parties. The ADR provider may also discuss the strengths and weaknesses of each parties' case, and help the parties develop a case management discovery plan.

The ADR provider shall render an assessment of the case in writing. Other terms of the neutral evaluation assessment are as follows:

III. FEES FOR SERVICE

It is understood and acknowledged that fees for ADR services are subject to negotiation and agreement by the ADR provider and the parties. It is hereby expressly agreed that ADR services will be provided at the rate of \$1,500 per half day, or \$2,500 for a full day, inclusive of all preparation time and review of mediation briefs, payable equally by each party. Fees and the ADR provider's costs of copying, etc. are immediately due and payable upon receipt of an itemized invoice from the ADR provider. Other terms concerning payment of fees are: Any action to recover the ADR provider's fees shall be venued in the County of Alameda. Prevailing party shall be entitled to attorneys fees and costs.

IV. ACKNOWLEDGMENT

We hereby declare we have read, understood and agreed to the foregoing terms for ADR service.

Date: _____

Date: _____

Party Signature

Party Signature

Attorney Signature (optional)

Attorney Signature (optional)

Date: _____

(Attach additional acknowledgment sheets
for other parties as needed)

This Service Description and Fee Agreement is provided pursuant to the California Dispute Resolution Programs Act, Business and Professions Code Section 465 et seq.